

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 404

January 27, 1977

LIMITED PARTNER: RIGHT TO DEMAND RECORDS FOR AN OUT-OF-STATE PARTNERSHIP

Syllabus:

Advice has been requested relative to a limited partner's right to demand the production of, and his or her responsibility to provide to this department, records of an out-of-state partnership.

Questions:

1. Does a limited partner have the right to demand the production of the records of an out-of-state partnership?
2. Does a limited partner have the responsibility to produce records of an out-of-state partnership for this department's examination?

Decision:

1. Yes.
2. Yes.

Discussion:

1. The Uniform Limited Partnership Act (ULPA), California Corporations Code Sections 15501 through 15531, in effect in 36 states, provides in part:

§ 15510. Rights of limited partners. (1) A limited partner shall have the same rights as a general partner to:

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,
- (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

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§ 15019. Partnership books; right to inspect. The partnership

books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

§ 15020. Disclosure of information on demand. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

§ 15021. Accounting of partner to partnership; personal representatives of deceased last surviving partner. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

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§ 15022. Partner's right to formal accounting. Any partner shall have the right to a formal account as to partnership affairs:

- (a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,
- (b) If the right exists under the terms of any agreement,
- (c) As provided by Section 15021,
- (d) Whenever other circumstances render it just and reasonable.
(emphasis added)

The above provisions of ULPA, in effect in all but 14 states *, are expansive enough to cover all records of a limited partnership and would allow a limited partner the right to demand the production of all records of an out-of-state partnership where the partnership agreement can be enforced under the laws of a state that has adopted ULPA.

* The states that have not adopted ULPA are Alabama, Connecticut, Delaware, Kansas, Kentucky, Louisiana, Maine, Mississippi, North Dakota, Ohio, Oregon, South Carolina, Texas, and Wyoming.

If the partnership agreement can only be enforced under the laws of a state that has not adopted ULPA, the right of a limited partner to demand the production of such records will have to be determined in light of the law in effect in that state on a case by case basis.

2. There is a provision in the California Administrative Code that a limited partner of an out-of-state partnership which carries on no business in this state and derives no income from sources within this state has the responsibility to, and, if required, must produce records of such partnership for this department's examination (Cal. Admin. Code, Tit. 18, § 17932(d)(2)). A limited partner of an out-of-state partnership which carries on business in this state and/or derives income from sources within this state has the responsibility and, if required, must produce records of such partnership for this department's examination. (See Revenue and Taxation Code Section 19254 which basically provides that this department has the power to examine records of a taxpayer regarding matters required to be included in a California return and Section 18683 which gives this department the authority to impose a penalty for failure of a taxpayer to provide information after a written request unless the failure is due to reasonable cause and not willful neglect. Reading these provisions together compels the above conclusion.)